



# State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

## Appendix A

### **LRB BILL HISTORY RESEARCH APPENDIX**

 The drafting file for 2013 LRB-2476/P2 (For: Rep. Stone)


has been copied/added to the drafting file for

**2013 LRBb0365** (For: LFB – Budget)



**RESEARCH APPENDIX -**  
**PLEASE KEEP WITH THE DRAFTING FILE**

Date Transfer Requested: 06/06/2013 (Per: RNK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

**2013 DRAFTING REQUEST**

**Bill**

Received: **5/29/2013** Received By: **rkite**  
Wanted: **As time permits** Same as LRB:  
For: **Jeff Stone (608) 266-8590** By/Representing: **Justin Phillips**  
May Contact: Drafter: **rkite**  
Subject: **Nat. Res. - nav. waters** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Rep.Stone@legis.wisconsin.gov**  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Confirming boundaries of Milwaukee's lake shore

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	rkite 5/30/2013						
/P1	rkite 6/3/2013	scalvin 5/30/2013	jmurphy 5/31/2013		mbarman 5/31/2013		
/P2		scalvin 6/3/2013	rschluet 6/3/2013		srose 6/3/2013		

FE Sent For:

<END>

**2013 DRAFTING REQUEST**

**Bill**

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Wanted: **As time permits** Same as LRB:  
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/?	rkite 5/30/2013			_____			
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/P1	scalvin 5/30/2013	jmurphy 5/31/2013		_____	mbarman 5/31/2013		
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FE Sent For:

/P2 sac  
06/03/2013

  
END>

**2013 DRAFTING REQUEST**

**Bill**

Received: **5/29/2013** Received By: **rkite**  
Wanted: **As time permits** Same as LRB:  
For: **Jeff Stone (608) 266-8590** By/Representing: **Justin Phillips**  
May Contact: Drafter: **rkite**  
Subject: **Nat. Res. - nav. waters** Addl. Drafters:  
Extra Copies:

Submit via email: **YES**  
Requester's email: **Rep.Stone@legis.wisconsin.gov**  
Carbon copy (CC) to:

**Pre Topic:**

No specific pre topic given

**Topic:**

Confirming boundaries of Milwaukee's lake shore

**Instructions:**

See attached

**Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	rkite	/PI sac 05/30/2013					
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*Jim*  
5/30

*Justin*  
5/31

FE Sent For:

<END>

**Kite, Robin**

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**From:** Gibson-Glass, Mary  
**Sent:** Wednesday, May 29, 2013 12:57 PM  
**To:** Kite, Robin  
**Subject:** FW: Couture Project Legislation  
**Attachments:** AN ACT to clarify or establish the boundary.docx; Bill to Confirm the Boundary of Milwaukee's Lake Michigan Shore.docx

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**From:** Phillips, Justin  
**Sent:** Wednesday, May 29, 2013 12:46 PM  
**To:** Gibson-Glass, Mary  
**Subject:** Couture Project Legislation

Mary

Attached are the two documents that the County Lawyers wrote up.

After speaking to the DNR and the County today I think I can give you the general goal of the legislation:

Milwaukee (county and city) with blessings from the Governor would like to allow for a building (Couture Building) to be built on what is currently the Milwaukee County Downtown Transit Center. The issue at hand is that the Shore Boundary being used by the City of Milwaukee has been in place since 1913. However an advocacy group is planning to challenge this and say that area west of this boundary line is the actually natural shore line of Lake Michigan therefore the Couture Building cannot be built. In this case Legislation is needed to conform that the 1913 line is the boundary and will clarify that the Couture building is not being built on lakebed.

In this specific instance, it is in the public interest that the Legislature should define the Shoreline boundary of this section of Lake Michigan, as set by the 1913 line instead of letting a judge do it. Reason being: a legislative action will be essentially quicker and smoother since the advocacy groups would be able to tie up this issue in court. The Statue that would have to be changed would be Chapter 841-842 which deals with Declaration of Interests within Real Property. I am working with the County as well as the City to make sure that the drafting file and it was suggested that perhaps even the bill list the history of the use of this 1913 lakeshore line.

It is possible to draft something for introduction as a standalone bill as well as for the budget? And for either option, while I think it's a bit unusually, can the bill include an extensive history of the 1913 line and its use

Thanks!

--

Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590

STATE OF WISCONSIN

2013 Senate Bill \_\_\_\_\_

2013 Assembly Bill \_\_\_\_\_

AN ACT to clarify or establish the boundary between upland and submerged lands in the bed of Lake Michigan at the City of Milwaukee.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

**Section 1. DEFINITION.** In this Act, "Shore Boundary" means the division line, extending from approximately Lafayette Place on the north to the present north harbor entrance on the south, in the City of Milwaukee, established by an agreement between the Chicago and Northwestern Railway Company and the City of Milwaukee and conveyance to the City of Milwaukee, and the map incorporated therein, recorded on April 23, 1913 in Volume 662, Pages 326-330, as Document No. 762955, Milwaukee County Register of Deeds; which Shore Boundary was modified by that certain quit claim deed from the City of Milwaukee to the Chicago and Northwestern Railway Company dated June 23, 1923 and recorded on September 28, 1923 as Document No. 1235857, Milwaukee County Register of Deeds; and which Shore Boundary was further described in Chapter 151, Laws of 1929 and Chapter 76, Laws of 1973.

**Section 2. BOUNDARY FIXED.** The entire length of the Shore Boundary is and shall remain fixed as the boundary between patented uplands and the submerged lands that are the bed of Lake Michigan. Such boundary line was "fixed and established" by the City of Milwaukee and the Chicago and Northwestern Railway Company by the 1913 agreement and conveyance, in part to bar the accrual of title to the railway company, as the littoral owner, of additional lands that had or would have formed on the shore by natural accretion as a result of improvements then contemplated or under construction by the City of Milwaukee and the United States for harbor, navigation and park.

**Section 3. RESTRICTIONS INAPPLICABLE OR TERMINATED.** The restrictions, reverter and limitations on the use or conveyance of those submerged lands lying between the south line of Wisconsin Avenue and the present north harbor entrance, as imposed by Chapter 358, Laws of 1909; Chapter 389, Laws of 1915; Chapter 285, Laws of 1923; Chapter 150, Laws of 1929; Chapter 151, Laws of 1929; Chapter 516, Laws of 1929; Chapter 381, Laws of 1931; Chapter 76, Laws of 1973 and any other Act, do not apply to land lying to the west of the Shore Boundary and, to the extent that such

## **Bill to Confirm the Boundary of Milwaukee's Lake Michigan Shore**

2013 Senate Bill \_\_\_\_\_

2013 Assembly Bill \_\_\_\_\_

This proposed law would resolve present and future issues related to the boundary line between dry land and former lakebed land. The present issue concerns the submerged lands granted by the State of Wisconsin to the City of Milwaukee for park and harbor purposes. The boundary line was set between the City of Milwaukee and the Chicago & Northwestern Railway Company in 1913, from from McKinley Marina to the harbor entrance.

The current issue relates to a parcel of land commonly referred to as the Transit Center, located south of Wisconsin Avenue and in the Third Ward. However, the broader issue that the proposed law will address and resolve is the boundary line for all submerged land that has subsequently been built upon, located north and south of Wisconsin Avenue. Some of those parcels are owned by Milwaukee County. Some are owned by private owners, based on deeds given many years ago. This law will provide clarity, and settle for all time, the issue of ownership with the parcels of land.

An advocacy group has suggested that the State of Wisconsin, as trustee for the public, may own a strip of land between the 1913 boundary by agreement and the original natural shore of Lake Michigan. The group has not identified where the natural shoreline was, if not along the line set in 1913.

The Governor has just announced plans to relocate the on- and off-ramps leading from U.S. Highway 94 to the Summerfest grounds and the Milwaukee lakefront. Milwaukee County has already voted to sell the Transit Center parcel for development. The proposal is to build a mixed-use high-rise building with walkways to the lakefront festival area and other public uses.

The 1913 boundary line is just east of those parcels. Confirmation of the 1913 line as the boundary will clarify that those parcels are not lakebed. If the natural shore of the lake was further west, all of that property would be affected.

The State of Wisconsin made grants to the City of Milwaukee along the shore of Lake Michigan, beginning in the 1890's, to allow it to fill in land. The area north of Wisconsin Avenue was designated by the legislature to be used for park and boulevard purposes. The area south of Wisconsin Avenue to the harbor entrance was designated to be used for various purposed related to the harbor and navigation. The City entered into the 1913

**Kite, Robin**

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**From:** Kite, Robin  
**Sent:** Thursday, May 30, 2013 1:51 PM  
**To:** Phillips, Justin  
**Subject:** RE: Update Language

Thanks, Justin. I cannot include much of this language in the draft because it is a background description of the history of the development of the Milwaukee shoreline. Although it provides an analysis of the issue, it is not appropriate to include this kind of language in the statutes. The statutes should contain only language that has a legal effect. But I will include this language in the drafting file.

Robin

---

**From:** Phillips, Justin  
**Sent:** Thursday, May 30, 2013 1:19 PM  
**To:** Kite, Robin  
**Subject:** Update Language

Robin-  
Bush Nielsen, our outside contact rewrote the original language he had shared with us. Let me know if this is helpful.  
jp

--  
Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590



STATE OF WISCONSIN

2013 Senate Bill \_\_\_\_\_

2013 Assembly Bill \_\_\_\_\_

AN ACT to clarify or establish the boundary between upland and submerged lands in the bed of Lake Michigan at the City of Milwaukee.

The people of the State of Wisconsin, represented in senate and assembly, do enact as follows:

**Section 1. DEFINITIONS.**

A. In this Act, "Agreement" means the agreement between the Chicago and Northwestern Railway Company and the City of Milwaukee, conveyance to the City of Milwaukee, and the map incorporated therein, recorded on April 23, 1913 in Volume 662, Pages 326-330, as Document No. 762955, Milwaukee County Register of Deeds.

B. In this Act, "Shore Boundary" means the division line, extending from approximately Lafayette Place on the north to the present north harbor entrance on the south, in the City of Milwaukee, established by the Agreement; which Shore Boundary was modified by that certain quit claim deed from the City of Milwaukee to the Chicago and Northwestern Railway Company dated June 23, 1923 and recorded on September 28, 1923 as Document No. 1235857, Milwaukee County Register of Deeds; and which Shore Boundary was further described in Chapter 151, Laws of 1929 and Chapter 76, Laws of 1973.

**Section 2. BOUNDARY FIXED; STATEMENT OF PUBLIC PURPOSE.** The entire length of the Shore Boundary is declared to be and shall remain fixed as the boundary between patented uplands and the submerged lands that are the bed of Lake Michigan. Such boundary line was "fixed and established" by the Agreement, which was entered into in furtherance of the City of Milwaukee's project to build an inner harbor, a harbor of refuge, and a vast public park along the shore of Lake Michigan. The City of Milwaukee did not possess a natural port or harbor site on Lake Michigan. At the City's request, the State of Wisconsin ceded to it portions of the bed of Lake Michigan for park and boulevard purposes, and for the purpose of establishing and maintaining thereon breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, together with such other uses not inconsistent with the improvement of navigation and fisheries in Lake Michigan, and the navigable waters tributary thereto, as the city may deem expedient. These grants permitted the City to

develop parks and an inner harbor that promoted safe and efficient shipping and manufacturing industries along waterways which connected the City to the Great Lakes and the Atlantic Ocean. The construction of the City's harbor was described by the Wisconsin Supreme Court as a "gigantic project" undertaken out "of dire necessity," which required "positive action" for which "the legislature wisely and well discharged its duties" by enacting the laws granting submerged lands to the City. One such grant, Chapter 358, Laws of 1909, as amended by Chapter 285, Laws of 1923, was affirmed by the Wisconsin Supreme Court in *City of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927). That grant permitted the City to "convey to the owner or owners of the shore land adjacent thereto any or all of [the ceded submerged] lands in fee simple." The Wisconsin Supreme Court declared that a conveyance by the City of submerged lands to a private party in furtherance of the greater harbor project was "not a private" purpose but "part and parcel of the larger scheme, purely public in its nature, designed to enable the city to construct its outer harbor in aid of navigation and commerce." The State of Wisconsin hereby declares that the public purpose of the City's harbor and parks project was similarly fostered by the Agreement. The submerged lands granted to the City of Milwaukee along the Shore Boundary were adjacent to shore land then owned by the Chicago and Northwestern Railway Company. The railroad's rights along the shore included the title to land formed by accretion and to place docks and piers. Those rights had been recognized and preserved by the State of Wisconsin in Chapter 200, Laws of 1897, notwithstanding the contemporaneous grant of the adjacent submerged lands to the City of Milwaukee. Further, in 1907, a court held that a portion of the land at McKinley Park, which had been formed as accretion after the City built harbor and park improvements, was owned in fee simple by the Chicago and Northwestern Railway Company and was not owned by the City of Milwaukee, "as had been originally assumed," as reported by the court in *Milwaukee County v. Milwaukee Yacht Club*, 256 Wis. 475, 477 (1950). The 1907 court decision threatened the City's title to park and harbor land it had created, and confirmed that the railroad would become the owner of accreted land that would form as a result of the harbor and park improvements the City was then constructing. Under the Agreement, reached in 1913, the railroad conveyed all of its right, title and interest in all land lying east of the Shore Boundary, including the accreted land held by the railroad under the 1907 court decision. The Agreement placed the Shore Boundary in the location of the then-existing railroad breakwater, except that it permitted the railroad to erect a new seawall, from approximately Mason Street on the north and Chicago Street on the south, at a new location approximately 100 feet east of the existing breakwater. The area enclosed by the new seawall would shortly have become dry land formed by accretion onto the land to the north that was then being filled

by the City of Milwaukee, which extended hundreds of feet into the lake. The State of Wisconsin is further satisfied that the Shore Boundary has been relied on by all owners of adjoining parcels since 1913. Since 1913, all land lying westerly of the Shore Boundary has been conveyed by deed as upland. Some of the parcels lying immediately west of the Shore Boundary are owned by private parties, and some are owned by Milwaukee County and the State of Wisconsin. The Shore Boundary has been used to demarcate the shore in Chapters 150 and 151, Laws of 1929, and all submerged land conveyances by the State of Wisconsin since that time. In order to resolve any remaining contention about the boundary of the filled submerged lands in this vicinity, the State of Wisconsin hereby confirms and declares that the Shore Boundary established in the Agreement is the boundary line for all submerged lands along that portion of the shore of Lake Michigan, and that the establishment of the Shore Boundary was necessary and desirable for the purpose of establishing and maintaining breakwaters, bulkheads, piers, wharves and other harbor facilities on the submerged lands granted to the City of Milwaukee. This declaration is made in lieu of, but has the same effect as, a final judgment entered by a court under Chapter 841, Wis.Stats.

**Section 3.** RESTRICTIONS INAPPLICABLE OR TERMINATED. All restrictions, reverter and limitations on the use or conveyance of those submerged lands lying between the south line of Wisconsin Avenue and the present north harbor entrance, as imposed by Chapter 358, Laws of 1909; Chapter 389, Laws of 1915; Chapter 285, Laws of 1923; Chapter 150, Laws of 1929; Chapter 151, Laws of 1929; Chapter 516, Laws of 1929; Chapter 381, Laws of 1931; Chapter 76, Laws of 1973; 1985 Wisconsin Act 327; and any other Act, do not apply to land lying to the west of the Shore Boundary or, to the extent that any such restrictions, reverter or limitations may be construed to apply, such land is hereby released from all such restrictions.



Wanted FCI. 5/31  
State of Wisconsin  
2013 - 2014 LEGISLATURE

RM  
nun  
PI  
LRB-2476/2  
RNK: /:....  
SAC

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-Note

IN  
5/30

- 1 AN ACT *gen cat* relating to: establishing the shoreline of Lake Michigan in the city  
2 of Milwaukee.

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***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

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***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

- 3 SECTION 1. 30.2038<sup>1</sup> of the statutes is created to read:  
4 **30.2038 Milwaukee shoreline established.** (1) (a) The shoreline of Lake  
5 Michigan in the city of Milwaukee is fixed and established to extend from  
6 approximately Lafayette Place on the north to the present north harbor entrance on  
7 the south as specified in the agreement between the Chicago and Northwestern  
8 Railway Company and the city of Milwaukee and in conformance with the  
9 conveyance to the City of Milwaukee recorded with the office of the register of deeds

1 of Milwaukee County on April 23, 1913 in volume 662, pages 326-330, as document  
2 number 762955.

3 (b) The shoreline described under par. (a) constitutes the division between the  
4 lakebed of Lake Michigan and land that is not part of the lakebed of Lake Michigan.

5 (2) Any restrictions or conditions imposed on the use of land or conveyance of  
6 land under chapter 358, laws of 1909, chapter 389, laws of 1915, chapter 285, laws  
7 of 1923, chapters 150, 151, and 156, laws of 1929, chapter 381, laws of 1931, and  
8 chapter 76, laws of 1973 do not apply to land located to the west of the shoreline  
9 described under sub. (1) (a).

10 *laws of 1929, chapter* (END)

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2476/?dn

RNK.:.....

*SM*

*-date-*

Please review this draft closely. The description of the agreement and conveyance in the draft are taken directly from the information that you provided to me and I cannot verify the accuracy of that information.

*\**

Please also note that if, in fact, the described land <sup>*that was*</sup> previously conveyed to the city of Milwaukee was lake bed land, that land is subject to the public trust doctrine as specified under article 9, section 1 of the Wisconsin Constitution. Under the public trust doctrine, the state holds title to navigable waters in trust for public purposes. The legislature has a limited ability to convey lake bed lands. The legislature may make a grant of lake bed land if the lake bed land is used for public purposes.

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: robin.kite@legis.wisconsin.gov

**DRAFTER'S NOTE  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2476/p1dn  
RNK:sac:jm

May 30, 2013

Please review this draft closely. The description of the agreement and conveyance in the draft are taken directly from the information that you provided to me and I cannot verify the accuracy of that information.

Please also note that if, in fact, the described land that was previously conveyed to the city of Milwaukee was lake bed land, that land is subject to the public trust doctrine as specified under article 9, section 1 of the Wisconsin Constitution. Under the public trust doctrine, the state holds title to navigable waters in trust for public purposes. The legislature has a limited ability to convey lake bed lands. The legislature may make a grant of lake bed land if the lake bed land is used for public purposes.

Please feel free to contact me if you have any questions about this draft.

Robin N. Kite  
Senior Legislative Attorney  
Phone: (608) 266-7291  
E-mail: [robin.kite@legis.wisconsin.gov](mailto:robin.kite@legis.wisconsin.gov)

**Kite, Robin**

---

**From:** Bushnell Nielsen <bnielsen@reinhartlaw.com>  
**Sent:** Friday, May 31, 2013 3:30 PM  
**To:** Rep.Stone; Kite, Robin  
**Cc:** teig.whaley-smith@milwcnty.com; 'Kimberly.Walker@milwcnty.com'  
(Kimberly.Walker@milwcnty.com); Mark Grady (mark.grady@milwcnty.com)  
**Subject:** RE: Couture Language FW: Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

Dear Robin and Justin:

I am one of the lawyers for Milwaukee County on this matter. I have reviewed your draft of May 30. As Ms. Kite's drafting memo stated, the legislature may make a lake bed grant if the bed is used for public purposes. The draft I sent to Justin contained a lengthy public purpose/public trust statement because that is required in a law concerning a lakebed grant, and this law will confirm and perhaps modify prior lakebed grants. That statement acknowledged that the greater purpose of developing a harbor permitted the cession from the city to a private party of a small sliver of lakebed, in the 1913 agreement, which this law ratifies. Others have stressed the necessity of this public purpose statement in the law. The history of this boundary is also based on the 1913 agreement that was referenced at length in the prior version. The 1913 agreement is fundamental to the setting of the boundary.

Also, it was strongly suggested by others that this law must contain a statement that the law serves the same purpose as a declaration by a court under Chapter 841. Milwaukee County requests that that language be included also. That provision is essential to assure that the law will be supported from all relevant stakeholders. Thank you, and thanks to Robin for the very quick drafting work.

I would of course be happy to answer any questions.

Bush Nielsen

**J. Bushnell Nielsen**

Reinhart Boerner Van Deuren s.c.  
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188  
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097  
bnielsen@reinhartlaw.com | bio | vCard | reinhartlaw.com  
Legal Secretary: Cecelia Schroeder | 262-951-4548 | c Schroeder@reinhartlaw.com

---

**From:** Rep.Stone [<mailto:Rep.Stone@legis.wisconsin.gov>]  
**Sent:** Friday, May 31, 2013 2:48 PM  
**To:** Bushnell Nielsen  
**Subject:** Couture Language FW: Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

Wanted to run this past you. While it doesn't include a lot of the history (because that's just not something that LRB does), it will be in the drafting file

--

Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590

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**From:** LRB.Legal  
**Sent:** Friday, May 31, 2013 11:47 AM



**To:** Rep.Stone

**Subject:** Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

**Following is the PDF version of draft LRB -2476/P1 and drafter's note.**

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Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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## Kite, Robin

---

**From:** Bushnell Nielsen <bnielsen@reinhartlaw.com>  
**Sent:** Friday, May 31, 2013 4:50 PM  
**To:** Rep.Stone; Kite, Robin  
**Cc:** 'teig.whaley-smith@milwcnty.com'; 'Kimberly.Walker@milwcnty.com' (Kimberly.Walker@milwcnty.com); 'Mark Grady (mark.grady@milwcnty.com)'  
**Subject:** RE: Couture Language FW: Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

Dear all:

Robin and I just had a good conversation. Let me summarize before I forget where we left this. Robin, I believe you said that you would be willing to add in a sentence that will convey the same point as the sentence the Representative submitted, that this act has the effect of a final judgment declaring the boundary. That sentence was:

In order to resolve any remaining contention about the boundary of the filled submerged lands in this vicinity, the State of Wisconsin hereby confirms and declares that the Shore Boundary established in the Agreement is the boundary line for all submerged lands along that portion of the shore of Lake Michigan, and that the establishment of the Shore Boundary was necessary and desirable for the purpose of establishing and maintaining breakwaters, bulkheads, piers, wharves and other harbor facilities on the submerged lands granted to the City of Milwaukee. This declaration is made in lieu of, but has the same effect as, a final judgment entered by a court under Chapter 841, Wis.Stats.

Also, Robin explained that the long history section is not something that ever goes into a law. However, the document submitted by Representative Stone that contains that language is part of her drafting file and could be requested or subpoenaed if the county wanted to show the legislative history or intent of the bill. I would still feel better if there was some reference in the bill to that history, but neither of us could figure out how to do that in the fashion used by LRB for drafting. If we can think up any idea, Robin said she would entertain it and give us her reaction as drafting attorney. Perhaps a letter from Representative Stone to LRB explaining the history of the lake front would serve that purpose and be more official than the document that is now in the drafting file.

Thanks again for turning this around so quickly.  
Bush

### J. Bushnell Nielsen

Reinhart Boerner Van Deuren s.c.  
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188  
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097  
bnielsen@reinhartlaw.com | bio | vCard | reinhartlaw.com  
Legal Secretary: Cecelia Schroeder | 262-951-4548 | cschroed@reinhartlaw.com

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**From:** Bushnell Nielsen  
**Sent:** Friday, May 31, 2013 3:30 PM  
**To:** 'Rep.Stone'; 'robin.kite@legis.wisconsin.gov'  
**Cc:** teig.whaley-smith@milwcnty.com; 'Kimberly.Walker@milwcnty.com' (Kimberly.Walker@milwcnty.com); Mark Grady (mark.grady@milwcnty.com)  
**Subject:** RE: Couture Language FW: Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

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to Justin contained a lengthy public purpose/public trust statement because that is required in a law concerning a lakebed grant, and this law will confirm and perhaps modify prior lakebed grants. That statement acknowledged that the greater purpose of developing a harbor permitted the cession from the city to a private party of a small sliver of lakebed, in the 1913 agreement, which this law ratifies. Others have stressed the necessity of this public purpose statement in the law. The history of this boundary is also based on the 1913 agreement that was referenced at length in the prior version. The 1913 agreement is fundamental to the setting of the boundary.

Also, it was strongly suggested by others that this law must contain a statement that the law serves the same purpose as a declaration by a court under Chapter 841. Milwaukee County requests that that language be included also. That provision is essential to assure that the law will be supported from all relevant stakeholders. Thank you, and thanks to Robin for the very quick drafting work.

I would of course be happy to answer any questions.

Bush Nielsen

**J. Bushnell Nielsen**

Reinhart Boerner Van Deuren s.c.

N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188

Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097

[bn Nielsen@reinhardt law.com](mailto:bn Nielsen@reinhardt law.com) | bio | vCard | [reinhardt law.com](http://reinhardt law.com)

Legal Secretary: Cecelia Schroeder | 262-951-4548 | [cschroed@reinhardt law.com](mailto:cschroed@reinhardt law.com)

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**From:** Rep.Stone [<mailto:Rep.Stone@legis.wisconsin.gov>]

**Sent:** Friday, May 31, 2013 2:48 PM

**To:** Bushnell Nielsen

**Subject:** Couture Language FW: Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

Wanted to run this past you. While it doesn't include a lot of the history (because that's just not something that LRB does), it will be in the drafting file

--

Justin Phillips

**Office of Representative Jeff Stone**

82<sup>nd</sup> Assembly District

(608) 266-8590

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**From:** LRB.Legal

**Sent:** Friday, May 31, 2013 11:47 AM

**To:** Rep.Stone

**Subject:** Draft review: LRB -2476/P1 Topic: Confirming boundaries of Milwaukee's lake shore

**Following is the PDF version of draft LRB -2476/P1 and drafter's note.**

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Any advice expressed in this writing as to tax matters was neither written nor intended by the sender or Reinhart Boerner Van Deuren s.c. to be used and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. If any such tax advice is made to any person or party other than to our client to whom the advice is directed and intended, then the advice expressed is being delivered to support the promotion or marketing (by a person other than Reinhart Boerner Van Deuren s.c.) of the transaction or matter discussed or referenced. Each taxpayer should seek advice based on the taxpayer's particular circumstances from an independent tax advisor.

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**Kite, Robin**

---

**From:** Phillips, Justin  
**Sent:** Friday, May 31, 2013 4:37 PM  
**To:** Kite, Robin  
**Subject:** word from the Admin

Robin-

In case Bush didn't convey this to you, I got feedback from DNR on this and what thee said we need is a "Public Purpose section" a section that "precludes quiet title action" and some background or history to justify this legislation. Some of those things were in Bush's "drafts" that I sent to you. This way, when this issue gets litigated, it will help our people out.

If you need a bit more information on this I need to steer you towards Andrew Hanus in Robin Vos' office, another legal mind would be able to perhaps explain this better.

Thanks so much for doing this and your understanding about the urgency in this matter  
jp

--

Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590

**Kite, Robin**

---

**From:** Phillips, Justin  
**Sent:** Monday, June 03, 2013 1:16 PM  
**To:** Kite, Robin  
**Subject:** RE: Couture Language

Robin-

I think we're moving the right direction here. As to point 3, would it be possible to say something along the lines of "Any other Lake bed grant"?

I recognize point 4, I'll be in touch with the speaker's office about the plan of attack there

Thanks so much for your patience and assistance with this bill. Much appreciated

--

Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590

---

**From:** Kite, Robin  
**Sent:** Monday, June 03, 2013 12:34 PM  
**To:** Phillips, Justin  
**Cc:** Hanus, Andrew; [bnielsen@reinhartlaw.com](mailto:bnielsen@reinhartlaw.com)  
**Subject:** RE: Couture Language

Please note a few things with regard to this language:

1. I have not had time to closely read the case referred to but I do not think that the court said that the cession of the lake bed was "essential". The court used the word "necessary" and I will substitute that word in the language.
2. I will be drafting this language as a nonstatutory provision because it is a legislative declaration and these types of provisions are typically not placed in the statutes.
3. I cannot add the reference to "any other Act" as requested. This would result in negating every restriction in any law ever enacted, regardless of the nature of the law, as concerns the property at issue. I do not think this is what you intend. If you have some narrower language, please let me know and I will include it. Or give me a call and I will be happy to discuss it with you.
4. Finally, as we discussed earlier, if you will be offering this proposal as a budget amendment, please note that it is possible that a Wisconsin court would find that this amendment is a "private or local law" which, under art. IV, sec. 18 of the Wisconsin Constitution, must be enacted as single-subject legislation. If so, this amendment cannot validly be enacted as part of the budget bill, which clearly encompasses more than one subject.

Robin

---

**From:** Phillips, Justin  
**Sent:** Monday, June 03, 2013 11:36 AM  
**To:** Kite, Robin  
**Cc:** Hanus, Andrew; Bushnell Nielsen ([bnielsen@reinhartlaw.com](mailto:bnielsen@reinhartlaw.com))  
**Subject:** Couture Language

Robin-

After talking to Andrew and Bush I think we a good idea of what we need to make sure that this covers what Milwaukee County and the DNR need if this gets litigated  
Bush mentioned that you'd be willing to write up language similar to what he's written below:

add to the end of 1(b):

In the event that the boundary so fixed does or may contain any portion of the lake bed of Lake Michigan, the State of Wisconsin declares that the cession of such lake bed by the city of Milwaukee to a private party under the agreement described in par. (a), in exchange for the conveyance to the city of Milwaukee of land and riparian rights, was essential to the fostering of the public purposes for which lake bed was granted to the city of Milwaukee, as recited and affirmed by the Wisconsin Supreme Court in *City of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927). Those public purposes are park and boulevard, and to establish and maintain breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, together with such other uses not inconsistent with the improvement of navigation and fisheries in Lake Michigan, and the navigable waters tributary thereto, as the city may deem expedient. This declaration is made in lieu of, but has the same effect as, a final judgment entered by a court under Chapter 841, Wis.Stats.

(2) modified as underlined:

Any restrictions, conditions, reverters or limitations on the use of land or conveyance of land under Chapter 358, Laws of 1909, Chapter 389, Laws of 1915, Chapter 285, Laws of 1923, Chapter 150, Laws of 1929, Chapter 151, Laws of 1929, Chapter 516, Laws of 1929, Chapter 381, Laws of 1931, Chapter 76, Laws of 1973, 1985 Wisconsin Act 327, and any other Act, do not apply to land located to the west of the shoreline described under sub. (1) (a).

--

Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590

**Kite, Robin**

---

**From:** Kite, Robin  
**Sent:** Monday, June 03, 2013 1:58 PM  
**To:** 'Bushnell Nielsen'; Phillips, Justin  
**Cc:** Hanus, Andrew  
**Subject:** RE: Milwaukee lake front bill

I will try and figure out a way to say this but if the draft says the lake bed report isn't required, doesn't this imply that the bill is conveying lake bed land? This brings me back to my original question about this proposal. If this is a proposal to convey lake bed land, then the way to do this is to amend all of the lake bed grants. Nonetheless, I will figure out a way to add this language.

Robin

---

**From:** Bushnell Nielsen [mailto:[bn Nielsen@reinhardt law.com](mailto:bn Nielsen@reinhardt law.com)]  
**Sent:** Monday, June 03, 2013 1:34 PM  
**To:** Kite, Robin; Phillips, Justin  
**Cc:** Hanus, Andrew; 'teig.whaley-smith@milwcnty.com'; 'Kimberly.Walker@milwcnty.com' (Kimberly.Walker@milwcnty.com); 'Mark Grady (mark.grady@milwcnty.com)'; William T. Shroyer; Dean B. Richards  
**Subject:** RE: Milwaukee lake front bill

I just received a phone call in which I was asked to add this sentence to the bill:  
The Department of Natural Resources shall not be required to prepare a report on this legislation pursuant to s. 13.097.

I think this makes sense because the law is not a conveyance of lake bed (those grants were made already), but rather is a ratification of a boundary line.  
Bush

**J. Bushnell Nielsen**  
Reinhart Boerner Van Deuren s.c.  
N16 W23250 Stone Ridge Drive, Suite One | Waukesha, WI 53188  
Office: 262-951-4514 | Cell: 262-993-1900 | Fax: 414-298-8097  
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---

**From:** Bushnell Nielsen  
**Sent:** Monday, June 03, 2013 1:25 PM  
**To:** 'Kite, Robin'; Phillips, Justin  
**Cc:** Hanus, Andrew; [teig.whaley-smith@milwcnty.com](mailto:teig.whaley-smith@milwcnty.com); 'Kimberly.Walker@milwcnty.com' (Kimberly.Walker@milwcnty.com); Mark Grady ([mark.grady@milwcnty.com](mailto:mark.grady@milwcnty.com)); William T. Shroyer; Dean B. Richards  
**Subject:** Milwaukee lake front bill

Dear all:  
Robin and I just talked. I misunderstood her point number 2 before but now believe that what she says is perfectly acceptable to the county. Lake bed grants are normally not in the code of statutes. She is saying that all of the law as drafted, including the parts added today, will be in the Act, but only the parts she drafted earlier will make their way into the statute code. The Act is the law, and inclusion in the statutes or not does not change that fact. She will modify the restriction language (her point number 3). Point 4 is the only remaining concern and it could be very important.  
Bush

**J. Bushnell Nielsen**

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**From:** Kite, Robin [<mailto:Robin.Kite@legis.wisconsin.gov>]

**Sent:** Monday, June 03, 2013 12:34 PM

**To:** Phillips, Justin

**Cc:** Hanus, Andrew; Bushnell Nielsen

**Subject:** RE: Couture Language

Please note a few things with regard to this language:

1. I have not had time to closely read the case referred to but I do not think that the court said that the cession of the lake bed was "essential". The court used the word "necessary" and I will substitute that word in the language.
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Robin

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**Sent:** Monday, June 03, 2013 11:36 AM

**To:** Kite, Robin

**Cc:** Hanus, Andrew; Bushnell Nielsen ([bn Nielsen@reinhartlaw.com](mailto:bn Nielsen@reinhartlaw.com))

**Subject:** Couture Language

Robin-

After talking to Andrew and Bush I think we have a good idea of what we need to make sure that this covers what Milwaukee County and the DNR need if this gets litigated

Bush mentioned that you'd be willing to write up language similar to what he's written below:

add to the end of 1(b):

In the event that the boundary so fixed does or may contain any portion of the lake bed of Lake Michigan, the State of Wisconsin declares that the cession of such lake bed by the city of Milwaukee to a private party under the agreement described in par. (a), in exchange for the conveyance to the city of Milwaukee of land and riparian rights, was essential to the fostering of the public purposes for which lake bed was granted to the city of Milwaukee, as recited and affirmed by the Wisconsin Supreme Court in *City of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927). Those public purposes are park and boulevard, and to establish and maintain breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway tracks, airports, and other harbor facilities, together with such other uses not inconsistent with the improvement of navigation and fisheries in Lake Michigan, and the navigable waters tributary thereto, as the city may



deem expedient. This declaration is made in lieu of, but has the same effect as, a final judgment entered by a court under Chapter 841, Wis.Stats.

(2) modified as underlined:

Any restrictions, conditions, reverters or limitations on the use of land or conveyance of land under Chapter 358, Laws of 1909, Chapter 389, Laws of 1915, Chapter 285, Laws of 1923, Chapter 150, Laws of 1929, Chapter 151, Laws of 1929, Chapter 516, Laws of 1929, Chapter 381, Laws of 1931, Chapter 76, Laws of 1973, 1985 Wisconsin Act 327, and any other Act, do not apply to land located to the west of the shoreline described under sub. (1) (a).

--

Justin Phillips

**Office of Representative Jeff Stone**  
82<sup>nd</sup> Assembly District

(608) 266-8590

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*Today*  
**State of Wisconsin**  
**2013 - 2014 LEGISLATURE**



LRB-2476/PIQ

RNK:sac:im

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

*gen out*

1 **AN ACT to create** 30.2038 of the statutes; **relating to:** establishing the shoreline  
2 of Lake Michigan in the city of Milwaukee.

---

***Analysis by the Legislative Reference Bureau***

This is a preliminary draft. An analysis will be provided in a subsequent version of this draft.

---

***The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:***

3 **SECTION 1.** 30.2038 of the statutes is created to read:  
4 **30.2038 Milwaukee shoreline established.** (1) (a) The shoreline of Lake  
5 Michigan in the city of Milwaukee is fixed and established to extend from  
6 approximately Lafayette Place on the north to the present north harbor entrance on  
7 the south as specified in the agreement between the Chicago and Northwestern  
8 Railway Company and the city of Milwaukee and in conformance with the  
9 conveyance to the City of Milwaukee recorded with the office of the register of deeds

## SECTION 1

1 of Milwaukee County on April 23, 1913, in volume 662, pages 326–330, as document  
2 number 762955.

(b) The shoreline described under par. (a) constitutes the division between the lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan.

5 (2) Any restrictions or conditions imposed on the use of land or conveyance of  
6 land under chapter 358, laws of 1909, chapter 389, laws of 1915, chapter 285, laws  
7 of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929, chapter 516, laws of  
8 1929, chapter 381, laws of 1931, and chapter 76, laws of 1973 do not apply to land  
9 located to the west of the shoreline described under sub. (1) (a).

**(END)**

any other act  
conveying a part of  
the lake bed of  
Lake Michigan

**2013-2014 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-2476/P2ins.  
RNK:.....

**INSERT 2-9**

1           **SECTION 1. Nonstatutory provisions.**

2           (1) The state declares all of the following:

3           (a) That if any part of the shoreline established under section 30.2038 of the  
4 statutes, as created by this act, is located on any part of the lake bed of Lake  
5 Michigan, the ceding of that lake bed by the city of Milwaukee to a private party  
6 under the agreement described in section 30.2038 (1) (a) of the statutes, as created  
7 by this act, was necessary to foster the public purposes for which the lake bed was  
8 ceded to the city of Milwaukee, as affirmed by the Wisconsin supreme court in City  
9 of Milwaukee v. State of Wisconsin, 193 Wis. 423 (1927).

10           (b) That the public purposes for which the lake bed was ceded as described in  
11 paragraph (a) were to construct a park and boulevard, to establish and maintain  
12 breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway  
13 tracks, airports, and other facilities, and for other purposes that are consistent with  
14 the improvement of navigation and fisheries in Lake Michigan and its tributaries  
15 and determined by the city of Milwaukee to be expedient.

16           (2) The declaration under subsection (1) is made in lieu of, and has the same  
17 effect as, a final judgment entered by a court under chapter 841 of the statutes.

18           (3) The department of natural resources is not required to prepare a report  
19 under section 13.097 (2) of the statutes with regard to the establishment of the  
20 shoreline of Lake Michigan under section 30.2028, as created by this act.

21

*30.2038 of the statutes,*



State of Wisconsin  
2013 - 2014 LEGISLATURE



LRB-2476/P2  
RNK:sac:rs

**PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION**

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4             **30.2038 Milwaukee shoreline established.** (1) (a) The shoreline of Lake  
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6     approximately Lafayette Place on the north to the present north harbor entrance on  
7     the south as specified in the agreement between the Chicago and Northwestern  
8     Railway Company and the city of Milwaukee and in conformance with the  
9     conveyance to the City of Milwaukee recorded with the office of the register of deeds

1 of Milwaukee County on April 23, 1913, in volume 662, pages 326–330, as document  
2 number 762955.

3 (b) The shoreline described under par. (a) constitutes the division between the  
4 lake bed of Lake Michigan and land that is not part of the lake bed of Lake Michigan.

5 (2) Any restrictions, conditions, reverters, or limitations imposed on the use of  
6 land or conveyance of land under chapter 358, laws of 1909, chapter 389, laws of  
7 1915, chapter 285, laws of 1923, chapter 150, laws of 1929, chapter 151, laws of 1929,  
8 chapter 516, laws of 1929, chapter 381, laws of 1931, chapter 76, laws of 1973, 1985  
9 Act 327, and any other act conveying a part of the lake bed of Lake Michigan do not  
10 apply to land located to the west of the shoreline described under sub. (1) (a).

11 **SECTION 2. Nonstatutory provisions.**

12 (1) The state declares all of the following:

13 (a) That if any part of the shoreline established under section 30.2038 of the  
14 statutes, as created by this act, is located on any part of the lake bed of Lake  
15 Michigan, the ceding of that lake bed by the city of Milwaukee to a private party  
16 under the agreement described in section 30.2038 (1) (a) of the statutes, as created  
17 by this act, was necessary to foster the public purposes for which the lake bed was  
18 ceded to the city of Milwaukee, as affirmed by the Wisconsin supreme court in *City*  
19 *of Milwaukee v. State of Wisconsin*, 193 Wis. 423 (1927).

20 (b) That the public purposes for which the lake bed was ceded as described in  
21 paragraph (a) were to construct a park and boulevard, to establish and maintain  
22 breakwaters, bulkheads, piers, wharves, warehouses, transfer sheds, railway  
23 tracks, airports, and other facilities, and for other purposes that are consistent with  
24 the improvement of navigation and fisheries in Lake Michigan and its tributaries  
25 and determined by the city of Milwaukee to be expedient.

(2) The declaration under subsection (1) is made in lieu of, and has the same effect as, a final judgment entered by a court under chapter 841 of the statutes.

(3) The department of natural resources is not required to prepare a report under section 13.097 (2) of the statutes with regard to the establishment of the shoreline of Lake Michigan under section 30.2038 of the statutes, as created by this act.

7 (END)